

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**JACOB NIELSEN**  
**Buena Vista County, Iowa**

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AQ- **53**  
NO. 2008-SW- **41**

TO: Jacob Nielsen  
5995 185<sup>th</sup> Avenue  
Newell, Iowa 50568

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jacob Nielsen for the purpose of resolving the air quality and solid waste disposal violations which occurred during the disposal of two commercial buildings in Newell, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryon Whiting, Field Office #3  
Iowa Department of Natural Resources  
1900 Grand Avenue – Gateway North Mall  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JACOB NIELSEN

(IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. On December 20, 2007, Marion Burnside, DNR asbestos coordinator, received an anonymous complaint regarding the demolition of two commercial buildings located in Newell, Iowa. On December 20, 2007, Mr. Burnside contacted the City of Newell (the City) and spoke to the City Clerk, Melinda Buchholz. Ms. Buchholz informed Mr. Burnside that the City had hired Wirtjers Trucking, Incorporated (Wirtjers) to demolish two buildings located at 209 South Fulton and 213 South Fulton in Newell. Ms. Buchholz stated the City did not inspect the buildings for asbestos containing material and did not notify the DNR of the demolition.

2. On December 20, 2007, Marion Burnside then contacted Wirtjers and spoke to Jason Kreft. Mr. Kreft stated that Wirtjers did not inspect the buildings for asbestos containing material and did not notify the DNR of the demolition. Mr. Kreft stated Wirtjers paid Jacob Nielsen \$100.00 per load to dump the demolition debris at Mr. Nielsen's farm located at 5995 185<sup>th</sup> Avenue near Newell. Mr. Burnside informed Mr. Kreft that the debris needed to be inspected by a licensed asbestos inspector and under no circumstances could the debris pile be burned. Mr. Burnside told Mr. Kreft that he needed to inform Mr. Nielsen not to burn the pile. Following the conversations with Mr. Kreft and Ms. Buchholz, Mr. Burnside contacted DNR Field Office 3 regarding the situation. Field Office 3 estimated the total gross building area of the two buildings that had been demolished to be 3,829 square feet.

3. On December 31, 2007, Doug Weir of Ames Environmental spoke to Mr. Burnside and stated that on December 26, 2007 he had gone to the Nielsen farm site with a Wirtjers' representative and the demolition debris had been burned. Mr. Weir stated when he arrived that he could not inspect the material because it was still smoldering.

4. On January 2 and January 16, 2008, Mr. Burnside conducted investigations at the demolition locations in Newell and at Mr. Nielsen's farm. Mr. Burnside confirmed that an inspection had not occurred; that a notification had not be submitted; that the buildings had been demolished and deposited at Mr. Nielsen's farm; and that the debris had been burned. Since the buildings were not tested for asbestos prior to demolition and the debris was burned before testing could occur, the demolition waste is considered asbestos containing material. In addition to the building debris, Mr. Burnside observed tires and metal band remnants in and near the burn pile.

5. On February 26, 2008, DNR issued a Notice of Violation letter to Mr. Nielsen for violations of the open burning and solid waste disposal regulations in connection with the burning of the demolition debris. Mr. Nielsen was notified the matter was being referred for further enforcement.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JACOB NIELSEN

6. On February 27, 2008, DNR issued a Notice of Violation letter to Mr. Nielsen for failing to operate a waste disposal site in accordance with the asbestos NESHAP regulations.

7. On October 31, 2008, Wirtgers and the City informed the DNR that the clean-up at Mr. Nielsen's property had been completed. On November 4, 2008, DNR Field Office 3 visited Mr. Nielsen's property and confirmed that the clean-up had been completed.

8. Mr. Nielsen has prior knowledge of the open burning and solid waste disposal regulations. In response to an open burning complaint in January 2006, DNR Field Office 3 sent a letter to Mr. Nielsen advising him that open burning and improper solid waste disposal was prohibited.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.154 details the requirements for the operation of an active waste disposal site. Among other requirements, warning signs are required and the material is required to be covered within 24 hours of disposal. Since the debris was not tested for asbestos, it is considered to be asbestos containing material and since Mr. Nielsen accepted money for the disposal of the material, he is considered to be operating an active waste disposal site. The requirements of 40 CFR 61.154 were not being met and Mr. Nielsen is considered in violation of this provision.

5. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JACOB NIELSEN

6. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Mr. Nielsen knowingly and willingly allowed the demolition debris to be deposited on his property. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and Mr. Nielsen agrees to do the following:

1. Mr. Nielsen shall install a gate at his property to restrict access to the area within 30 days of the date the Director signs this administrative consent order and
2. Mr. Nielsen shall pay a penalty of \$2,000.00 in accordance with the following payment schedule:

\$100.00 due January 15, 2009;	\$500.00 due December 15, 2009; and
\$400.00 due June 15, 2009;	\$500.00 due March 15, 2010.
\$500.00 due September 15, 2009;	

If the payments are not paid in accordance with the schedule; the remaining portion of the penalty shall be due immediately.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$2,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – Mr. Nielsen gained an economic benefit by charging Wirtjers \$100.00 per load to deposit the debris on his property. It has been estimated that the disposal required at least 20 truckloads of demolition debris to be taken to Mr. Nielsen's property. Based on the above considerations, \$1,000.00 is assessed for this factor

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JACOB NIELSEN

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to properly dispose of it may cause asbestos fibers to be released into the air through the burning of the debris. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all entities in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$500.00 is assessed for this factor.

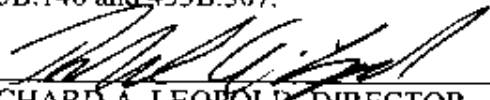
Culpability – Mr. Nielsen has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. DNR Field Office 3 had informed Mr. Nielsen of the open burning and solid waste disposal regulations in 2006. Mr. Nielsen knowingly allowed the building debris to be disposed of on his property and charged a fee for the disposal. Based on the above considerations, \$500.00 is assessed for this factor.

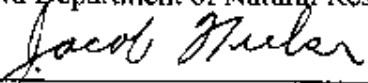
**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Mr. Nielsen. For that reason, Mr. Nielsen waives the rights to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146 and 455B.307.

  
\_\_\_\_\_  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

  
\_\_\_\_\_  
JACOB NIELSEN

Dated this 1 day of  
Dec, 2008.

Dated this 19<sup>th</sup> day of  
November, 2008.

Barb Stock (Con 10-6 Buena Vista County); Kelli Book; Marion Burnside; Bryon Whiting (FO3); Dan Stipe (FO4); EPA; VI.C, VII.C.1, and VII.C.4